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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5837 OF 2005
(For Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2005
(Against the order of acquittal)

The State of Maharashtra ... Applicant

V/s

Manik Nimba Pagar & ors. ... Respondents

Dr. F.R. Shaikh, A.P.P. for the applicant State.

Mr. P.N. Karlekar for the respondents.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 3RD APRIL, 2007.

P.C.:

1. This is an application filed by the State for leave to file an appeal against the judgment of acquittal of all the eight accused who are the in-laws of Smt. Yojana Manik Pagar i.e. wife of accused No.1. It was at her instance that all the accused came to be prosecuted before the Sessions Court, Nasik, for committing offence under the Indian Penal Code, namely, under Sections 498-A read with 34, for the offence punishable under Sections 313, 406 and 329 read with

Section 511 of the Indian Penal Code against the accused No.1.

2. Now, the advocate for all the accused is present, so also the original complainant Smt. Yojana Manik Pagar. The advocate for the accused stated that during the pendency of this case, the parties have obtained divorce by mutual consent and the complainant Smt. Yojana does not want any further proceedings against her in-laws i.e. the respondents/non-applicants in this application. We have verified this fact from Smt. Yojana who has stated that she has been compensated and obtained divorce and she has received Rs.1,50,000/- from the husband and the respondent No.1-husband has to pay Rs.5000/- per annum towards the maintenance of the child. The said amount of Rs.5,000/- is paid in our presence by Mr. Karlekar to Smt. Yojana. She has also stated that she is not at all interested in any kind of prosecution against the accused.

3. Mr. Karlekar drew our attention to the judgement of the Supreme Court reported in **(2003) 4 SCC 675, between B.S. Joshi & ors. v/s State of Haryana and anr.,** in which case the Supreme Court in exercise of powers under Section 482 of the Criminal Procedure Code quashed the criminal proceeding initiated at the instance of the

wife. Non-compoundable offences were also involved in that case. In that case, the wife has filed an affidavit that the F.I.R. was registered at her instance due to temperamental differences and implied imputations and, therefore, the Supreme Court found that there was no chance of conviction and it is not proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. The Supreme Court also relied upon the earlier judgement of **Madhavrao Jiwajirao Scindia v/s Sambhajirao Chandrojirao Angre, reported in (1988) I SCC 692,** wherein it was held that while exercising inherent power of quashing under Section 482, it was for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

4. Obtaining divorce by mutual consent, husband gives compensation to the wife Smt. Yojana and also paying maintenance to the child and the desire of the wife not to proceed further, according to us, are the special features in this case.

5. The learned A.P.P. submitted that, so far as this appeal is concerned, he leaves the matter to the

discretion of the Court, i.e. whether to grant leave or not.

5. Therefore, in the circumstances, we do not find that any interference in the order of acquittal is necessary. Therefore leave refused. The order of acquittal of the accused is, therefore, maintained.

6. Application disposed of accordingly.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)